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SUBJECT: CANADA SECURES FIRST WAR CRIMES CONVICTION

REF: A. OTTAWA 348  
- B. 08 OTTAWA 645

11. (SBU) Summary: Canada on May 22 secured a landmark first judicial decision under its 2000 Crimes Against Humanity and War Crimes Act (CAHWCA), convicting failed refugee claimant Dsir Munyaneza on all seven charges against him related to genocide, crimes against humanity, and war crimes during the 1994 Rwandan genocide. The conviction sets a significant precedent for future prosecutions and reinforces the message that Canada will not be a safe haven for war criminals. Canada has a growing stable of legal tools to use in such cases. End summary.

A COMPLEX TEST OF UNTRIED LAW  
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12. (U) On May 22, a Quebec Superior Court in Montreal convicted

42-year old Rwandan Dsir Munyaneza on all seven counts against him of genocide, crimes against humanity, and war crimes under the 2000 CAHWCA. Munyaneza faced allegations that he had participated in multiple incidents of murder and rape of civilians and had also led attacks against ethnic Tutsis at the National University of Rwanda during the Rwandan genocide of April 1 to July 31, 1994.

13. (U) Munyaneza came to Canada in 1997 and claimed refugee status. Authorities dismissed his claim in September 2000, largely on the testimony of an Royal Canadian Mounted Police war crimes investigator who linked him to the Rwandan genocide, and Canada denied his claim twice again on appeal. However, authorities did not order his deportation, apparently because by then the federal Justice Department had opened an investigation on him. Police arrested Munyaneza in October 2005.

14. (U) Munyaneza is the first individual to be tried -- and the first to be convicted -- under CAHWCA. All seven charges against him carry mandatory minimum penalties of life imprisonment, with no eligibility for parole for 25 years. The court has not yet set a sentencing date.

15. (U) The complex case spanned two years and three continents (North America, Europe, and Africa), and involved more than 60 witnesses, many of whom travelled from Rwanda for that purpose. The burden of proof required by the CAHWCA is high, particularly for genocide, which requires satisfaction beyond a reasonable doubt of "intent" to commit genocide. The "intent" definition does not apply to crimes against humanity and war crimes. Legal experts estimated the cost of the trial at more than C\$1.6 million. There is no indication yet whether Munyaneza will attempt to appeal the court's verdict.

CRIMES AGAINST HUMANITY AND WAR CRIMES ACT  
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16. (U) Canada became the first country in the world to incorporate the obligations of the Rome Statute of the International Criminal Court (ICC) into its national laws when it adopted the CAHWCA in 12000. The CAHWCA criminalizes genocide, crimes against humanity,

and war crimes based on customary and conventional international law. The CAHWCA gives Canada jurisdiction over: crimes committed on Canadian territory and by Canadians anywhere in the world; crimes committed against Canadian nationals; and, any individual present in Canada accused of crimes listed in the Act, regardless of that individual's nationality or where the crime(s) occurred.

¶7. (U) The war crimes unit of the federal Justice Department conducts war crimes investigations. To be accepted for investigation, allegations must "disclose personal involvement or command responsibility, and the evidence pertaining to the allegation must be corroborated and obtainable in a reasonable and rapid fashion." As of 2006-2007, the unit listed 62 active cases. Qrapid fashion." As of 2006-2007, the unit listed 62 active cases. (No more recent statistics are publicly available.) No prosecution of genocide, crimes against humanity, or war crimes may be undertaken without the written consent of the Attorney General of Canada or the Deputy Attorney General.

#### OTHER LEGAL REMEDIES

¶8. (U) In addition to the CAHWCA, three other Canadian laws -- the Extradition Act, the Immigration and Refugee Protection Act (IRPA), and the Citizenship Act -- provide remedies and authorize enforcement action against alleged war criminals or persons who have committed crimes against humanity. The federal government determines which remedy to use based on court requirements for the substantiation and verification of evidence in criminal or immigration and refugee cases, available resources, Canada's obligations under international law, and federal policy that Canada not be a safe haven for war criminals.

OTTAWA 00000383 002 OF 002

¶9. (U) The available remedies include:

- prosecution in Canada under the CAHWCA;
- extradition to a foreign government (on request);
- surrender to an international tribunal (on request);
- revocation of citizenship and deportation;
- denial of a visa to persons outside Canada;
- denial of eligibility to file a refugee claim in Canada;
- denial of refugee status;
- inquiry and removal from Canada under the Immigration and Refugee Protection Act (IRPA); and/or,
- the designation of governments considered to have engaged in gross human rights violations under 35(1) of the IRPA.

¶10. (SBU) Comment: The Munyaneza verdict sets an important precedent that will shape the legal framework of future war crimes prosecutions in Canada and reinforces Canada's ability to prosecute and convict war criminals. However, Munyaneza's ability to remain in Canada without restriction for eight years prior to his arrest -- despite three rejections of his refugee claim -- underscores ongoing concerns with laxities in Canada's refugee system (reftels).

BREESE